

**APPENDIX B**  
**PLAINTIFFS' PROPOSED CONSTRUCTIONS AND SUPPORTING EVIDENCE**

| Ref.<br>No. | Term(s) to be<br>Construed | Patent(s)              | Claim(s)                             | Plaintiffs' Proposed<br>Construction   | Identification Of All References From<br>The Specification And Prosecution<br>History And Identification Of<br>Extrinsic Evidence Relied Upon <sup>1</sup>  |
|-------------|----------------------------|------------------------|--------------------------------------|--|---|
| 1.          | extract                    | 5,968,567<br>6,177,122 | 18<br>1, 2, 5, 6, 7,<br>8, 9, 10, 12 | The substance containing<br>beneficial amounts of Phase II<br>enzyme inducers and/or their<br>precursors that results from<br>manipulation of one or more of<br>cruciferous sprouts, seeds,<br>plants, and/or plant parts,<br>where the manipulation causes<br>the separation of component<br>fractions of the cruciferous<br>sprouts, seeds, plants, and/or<br>plant parts. | <p><b>Intrinsic evidence:</b></p> <p>‘567 patent, Claims 9, 16, 18, col. 22, ll.<br/>22-32, 53-55, 60-61;<br/>‘895 patent, Claim 15, col. 1, ll. 15-26,<br/>col. 6, 1, 65-col. 7, 1, 3, col. 11, ll. 18-34,<br/>col. 22, ll. 48-58;<br/>‘122 patent, Claims 1, 2, 5-10, 12, col.<br/>21, 1, 55-col. 22, 1, 34;<br/>‘770 patent, Claims 10, 13, 15-24, 26,<br/>col. 22, ll. 37-45, 50-51, 54-67, col. 23, 1,<br/>1-col. 24, 1, 4, col. 24, ll. 7-8;<br/>Exh. 5F (“770 history”) at 5F41.<br/><i>The invention – ‘895 patent:</i><br/>col. 1, ll. 14-65;<br/>col. 1, 1, 66-col. 2, 1, 7;<br/>col. 2, 1, 36-col. 5, 1, 67;<br/>col. 6, ll. 27-37;<br/>col. 6, 1, 65-col. 7, 1, 3;<br/>col. 8, ll. 14-18;<br/>col. 11, ll. 37-60.</p> <p><b>Extrinsic evidence:</b></p> <p>Exh. 7 (Sybert Report), ¶¶ 24-44;<br/>Exh. 12 (Ziegler Depo), p. 42, ll. 3-17;<br/>Exh. A (B000021-23);<br/>Exh. B (CSC003675-84);<br/>Exh. C (CSC000680);<br/>Exh. D (CSC002976).</p> |

<sup>1</sup> Pursuant to Paragraph 3(h) of the Scheduling Order dated November 14, 2007.

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|----------|------------------------------|---|---|---|---|
| 2.       | Row Intentionally Left Blank |   |   |   |   |
| 3.       | Food product                 | 5,725,895<br>5,968,567<br>6,177,122<br>6,242,018<br>7,303,770 | 14, 15<br>9, 16, 18<br>6, 7, 8, 12<br>1, 2<br>10, 13, 15,<br>16, 17, 18,<br>19, 20, 21,<br>23, 24, 26 | Any ingestible substance containing beneficial amounts of Phase II enzyme inducers and/or their precursors. | <p><b>Intrinsic Evidence:</b></p> <p>'895 patent, Abstract, Claims 14, 15, col. 22, ll. 40-48;</p> <p>'567 patent, Claims 9, 16, 19, col. 22, ll. 22-32, 53-55, 60-61;</p> <p>'122 patent, Claims 6-8, 12, col. 22, ll. 6-11, 27-34;</p> <p>'018 patent, Claims 1, 2, col. col. 21, ll. 46-56;</p> <p>'770 patent, Claims 10, 13, 15-24, 26, col. 22, ll. 37-46, 51-52, 1, 54-col. 24, 1, 8;</p> <p>Exh. 1C ('895 history) at 1-C37-40.</p> <p><i>The specification</i></p> <p>'895 patent, col. 2, l. 36-col. 5, l. 67; col. 6, ll. 27-37, col. 11, ll. 37-60; col. 6, ll. 27-37; col. 6, l. 65-col. 7, l. 3; col. 11, ll. 37-60.</p> <p><i>The invention – '895 patent:</i></p> <p>col. 1, ll. 14-65;</p> <p>col. 1, l. 66 - col. 2, l. 7;</p> <p>col. 2, l. 36 - col. 5, l. 67;</p> <p>col. 6, ll. 27-37;</p> <p>col. 6, l. 65 - col. 7, l. 3;</p> <p>col. 8, ll. 14-18;</p> <p>col. 11, ll. 37-60.</p> <p><b>Extrinsic Evidence:</b></p> <p>Exh. 7 (Sybert Report), ¶ 24-30, 45-57.</p> |

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|----------|--------------------------|------------------------|--|--|---|
| 4.       | Human Food Product       | 5,968,567<br>7,303,770 | 9, 16, 18<br>10, 13, 15,<br>16, 17, 18,<br>19, 20, 21,<br>23, 24, 26 | <p>Plaintiffs disagree that this term requires construction separately from the construction of the term "food product." <i>See above.</i> Accordingly, a "human food product" is simply a "food product" which is suitable for human consumption.</p> | <p><i>See also</i>, '895 patent, col. 6, l. 31 ("salads, drinks or sandwiches"); ll. 34-35 ("Breads, teas, soups, cereals, pills and tablets"); col. 10, ll. 8-16 ("A sprout is suitable for human consumption if it does not have non-edible substrate such as soil attached or clinging to it ... washing may be required to achieve a sprout suitable for human consumption.")</p> <p><b>Intrinsic evidence:</b><br/><i>The specification</i><br/>'895 patent, col. 10, ll. 32-33.</p> <p><i>The invention – '895 patent:</i><br/>col. 1, ll. 14-65;<br/>col. 7, l. 66 - col. 2, l. 7;<br/>col. 2, ll. 19-43;<br/>col. 6, l. 65 - col. 7, l. 3;<br/>col. 8, ll. 14-18.</p> |
| 5.       | Cruciferous;<br>Crucifer | 5,725,895<br>5,968,567 | 14, 15<br>9, 16, 18  | <p>Plaintiffs disagree that this term requires special construction. "Cruciferous" and "Crucifer" are synonymous; they mean plants of the family <i>Cruciferae</i>.</p>  |   |

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|----------|--|------------------------|--|--|--|
| 6.       | Plant tissue   | 7,307,770              | 10, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26 | Plaintiffs disagree that this term requires special construction. "Plant tissue" is any tissue of a plant, including sprouts, seeds, plants, and plant parts.  | <p><b>Intrinsic evidence:</b><br/> <i>The claims</i><br/>         '770 patent, col. 22, ll. 37-45; col. 22, ll. 54-67; col. 24, ll. 7-8.</p> <p><i>The specification</i><br/>         '895 patent, col. 9, ll. 4-6.</p> <p><b>The invention – '895 patent:</b><br/>         col. 1, ll. 14-65;<br/>         col. 7, ll. 66 - col. 2, ll. 7;<br/>         col. 2, ll. 19-43;<br/>         col. 6, ll. 65 - col. 7, ll. 3;<br/>         col. 8, ll. 14-18.</p> |
| 7.       | Non-toxic levels of indole glucosinolates and their breakdown products and goitrogenic hydroxybutenyl glucosinolates | 5,725,895<br>6,242,018 | 14, 15<br>2  | Plaintiffs disagree that this term requires special construction. There is no evidence that one of ordinary skill in the art would not understand how to determine what levels of the recited compounds are toxic. | <p><b>Intrinsic evidence:</b><br/>         '895 patent: col. 1, ll. 22-26; col. 11, ll. 8-16.</p> <p><b>The invention – '895 patent:</b><br/>         col. 1, ll. 14-65;<br/>         col. 1, ll. 66 - col. 2, ll. 7;<br/>         col. 2, ll. 36 - col. 5, ll. 67;<br/>         col. 6, ll. 27-37;<br/>         col. 6, ll. 65 - col. 7, ll. 3;<br/>         col. 8, ll. 14-18;<br/>         col. 11, ll. 37-60.</p>  |

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|----------|---|-----------|----------|--|--|
| 8.       | Extracting glucosinolates and isothiocyanates with a non-toxic solvent and isothiocyanates from cruciferous seeds, sprouts, plants or plant parts | 5,725,895 | 15       | <p>Plaintiffs disagree that this term requires special construction, other than the term "extracting." See "extract" above.</p> <p>Applying Plaintiffs' proposed construction of "extract," this term means exposing cruciferous seeds, sprouts, plants, or plant parts to a non-toxic solvent in a manner that causes the separation of component fractions of the cruciferous sprouts, seeds, plants, and/or plant parts, and where at least one component fraction contains beneficial amounts of glucosinolates and isothiocyanates.</p> | <p><b>Intrinsic evidence:</b></p> <p>'567 patent, Claims 9, 16, 18, col. 22, ll. 22-32, 53-55, 60-61;</p> <p>'895 patent, Claim 15, col. 1, ll. 15-26, col. 6, 1, 65-col. 7, 1, 3, col. 11, ll. 18-34, col. 22, ll. 48-58;</p> <p>'122 patent, Claims 1, 2, 5-10, 12, col. 21, 1, 55-col. 22, 1, 34;</p> <p>'770 patent, Claims 10, 13, 15-24, 26, col. 22, ll. 37-45, 50-51, 54-67, col. 23, 1, 1-col. 24, 1, 4, col. 24, ll. 7-8; Exh. 5F ('770 history) at 5F41.</p> <p><i>The invention – '895 patent:</i></p> <p>col. 1, ll. 14-65;</p> <p>col. 1, 1, 66 - col. 2, 1, 7;</p> <p>col. 2, 1, 36 - col. 5, 1, 67;</p> <p>col. 6, ll. 27-37;</p> <p>col. 6, 1, 65 - col. 7, 1, 3;</p> <p>col. 8, ll. 14-18;</p> <p>col. 11, ll. 37-60.</p> <p><b>Extrinsic evidence:</b></p> <p>Exh. 7 (Sybert Report), ¶¶ 24-44;</p> <p>Exh. 12 (Ziegler Depo), p. 42, ll. 3-17;</p> <p>Exh. A (B000021-23);</p> <p>Exh. B (CSC003675-84);</p> <p>Exh. C (CSC000680);</p> <p>Exh. D (CSC002976).</p> |

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|----------|--|------------------------|---|--|--|
| 9.       | Extracting glucosinolates and isothiocyanates from ... | 5,968,567<br>7,303,770 | 9, 16, 18<br>10, 13, 15,<br>16, 17, 18,<br>19, 20, 21,<br>22, 23, 24,<br>26 | <p>Plaintiffs disagree that this term requires special construction, other than the term "extracting." See "extract" above.</p> <p>Applying Plaintiffs' proposed construction of "extract," the term means manipulating one or more of cruciferous sprouts, seeds, plants, and/or plant parts, where the manipulation causes the separation of component fractions of the cruciferous sprouts, seeds, plants, and/or plant parts, and where at least one component fraction contains beneficial amounts of glucosinolates and isothiocyanates.</p> | <p><b>Intrinsic evidence:</b></p> <p>'567 patent, Claims 9, 16, 18, col. 22, ll. 22-32, 53-55, 60-61;</p> <p>'895 patent, Claim 15, col. 1, ll. 15-26, col. 6, 1, 65-col. 7, 1, 3, col. 11, ll. 18-34, col. 22, ll. 48-58;</p> <p>'122 patent, Claims 1, 2, 5-10, 12, col. 21, 1, 55-col. 22, 1, 34;</p> <p>'770 patent, Claims 10, 13, 15-24, 26, col. 22, ll. 37-45, 50-51, 54-67, col. 23, 1, 1-col. 24, 1, 4, col. 24, ll. 7-8; Exh. 5F ('770 history) at 5F41.</p> <p><i>The invention – '895 patent:</i></p> <p>col. 1, ll. 14-65;</p> <p>col. 1, 1, 66 - col. 2, 1, 7;</p> <p>col. 2, 1, 36 - col. 5, 1, 67;</p> <p>col. 6, ll. 27-37;</p> <p>col. 6, 1, 65 - col. 7, 1, 3;</p> <p>col. 8, ll. 14-18;</p> <p>col. 11, ll. 37-60.</p> <p><b>Extrinsic evidence:</b></p> <p>Exh. 7 (Sybert Report), ¶¶ 24-44;</p> <p>Exh. 12 (Ziegler Depo), p. 42, ll. 3-17;</p> <p>Exh. A (B000021-23);</p> <p>Exh. B (CSC003675-84);</p> <p>Exh. C (CSC000680);</p> <p>Exh. D (CSC002976).</p> |

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|----------|---|-----------|-----------|---|--|
| 10.      | Removing the extracted sprouts, seeds, or a combination thereof from said solvent | 5,968,567 | 9, 16, 18 | <p>Plaintiffs disagree that this term requires special construction, other than the term "extracted." <i>See</i>, "extract" above.</p> <p>Applying Plaintiffs' proposed construction of "extract," this term means that, following exposure of sprouts and/or seeds to a solvent, the fraction containing the solvent is separated from the fraction containing the sprouts and/or seeds.</p> | <p><b>Intrinsic evidence:</b><br/>           '567 patent, Claims 9, 16, 18, col. 22, ll. 22-32, 53-55, 60-61;<br/>           '895 patent, Claim 15, col. 1, ll. 15-26, col. 6, 1. 65-col. 7, 1. 3, col. 11, ll. 18-34, col. 22, ll. 48-58;<br/>           '122 patent, Claims 1, 2, 5-10, 12, col. 21, 1. 55-col. 22, 1. 34;<br/>           '770 patent, Claims 10, 13, 15-24, 26, col. 22, ll. 37-45, 50-51, 54-67, col. 23, 1, 1-col. 24, 1. 4, col. 24, ll. 7-8; Exh. 5F ('770 history) at 5F41.</p> <p><i>The invention – '895 patent:</i><br/>           col. 1, ll. 14-65;<br/>           col. 1, 1. 66 - col. 2, 1. 7;<br/>           col. 2, 1. 36 - col. 5, 1. 67;<br/>           col. 6, ll. 27-37;<br/>           col. 6, 1. 65 - col. 7, 1. 3;<br/>           col. 8, ll. 14-18;<br/>           col. 11, ll. 37-60.</p> <p><b>Extrinsic evidence:</b><br/>           Exh. 7 (Sybert Report), ¶¶ 24-44;<br/>           Exh. 12 (Ziegler Depo), p. 42, ll. 3-17;<br/>           Exh. A (B000021-23);<br/>           Exh. B (CSC003675-84);<br/>           Exh. C (CSC000680);<br/>           Exh. D (CSC002976).</p> |

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|----------|---|------------------------|-----------------|--|---|
| 11.      | Recovering the extracted glucosinolates and isothiocyanates | 5,725,895<br>5,968,567 | 15<br>9, 16, 18 | <p>Plaintiffs disagree that this term requires special construction, other than the term "extracted." <i>See "extract" above.</i></p> <p>Applying Plaintiffs' proposed construction of "extract," this term means that, following the separation of the fraction containing sprouts and/or seeds from the fraction containing the solvent, the fraction rich in glucosinolates and isothiocyanates is retained for further processing.</p> | <p><b>Intrinsic evidence:</b></p> <p>'567 patent, Claims 9, 16, 18, col. 22, ll. 22-32, 53-55, 60-61;</p> <p>'895 patent, Claim 15, col. 1, ll. 15-26, col. 6, 1, 65-col. 7, 1, 3, col. 11, ll. 18-34, col. 22, ll. 48-58;</p> <p>'122 patent, Claims 1, 2, 5-10, 12, col. 21, 1, 55-col. 22, 1, 34;</p> <p>'770 patent, Claims 10, 13, 15-24, 26, col. 22, ll. 37-45, 50-51, 54-67, col. 23, 1-1 col. 24, 1, 4, col. 24, ll. 7-8; Exh. 5F ('770 history) at 5F41.</p> <p><i>The invention - '895 patent:</i></p> <p>col. 1, ll. 14-65;</p> <p>col. 1, 1, 66 - col. 2, 1, 7;</p> <p>col. 2, 1, 36 - col. 5, 1, 67;</p> <p>col. 6, ll. 27-37;</p> <p>col. 6, 1, 65 - col. 7, 1, 3;</p> <p>col. 8, ll. 14-18;</p> <p>col. 11, ll. 37-60.</p> <p><b>Extrinsic evidence:</b></p> <p>Exh. 7 (Sybert Report), ¶¶ 24-44;</p> <p>Exh. 12 (Ziegler Depo), p. 42, ll. 3-17;</p> <p>Exh. A (B000021-23);</p> <p>Exh. B (CSC003675-84);</p> <p>Exh. C (CSC000680);</p> <p>Exh. D (CSC002976).</p> |

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|----------|--|-----------|----------|--|--|
| 12.      | Drying said extracted glucosinolates and isothiocyanates | 5,968,567 | 16, 18   | <p>Plaintiffs disagree that this term requires special construction, other than the term "extracted." See "extract" above.</p> <p>Applying Plaintiffs' proposed construction of "extract," this term means drying the glucosinolate- and isothiocyanate-rich fraction retained in the previous step.</p> | <p><b>Intrinsic evidence:</b><br/>           '567 patent, Claims 9, 16, 18, col. 22, ll. 22-32, 53-55, 60-61;<br/>           '895 patent, Claim 15, col. 1, ll. 15-26, col. 6, 1, 65-col. 7, 1, 3, col. 11, ll. 18-34, col. 22, ll. 48-58;<br/>           '122 patent, Claims 1, 2, 5-10, 12, col. 21, 1, 55-col. 22, 1, 34;<br/>           '770 patent, Claims 10, 13, 15-24, 26, col. 22, ll. 37-45, 50-51, 54-67, col. 23, 1, 1-col. 24, 1, 4, col. 24, ll. 7-8; Exh. 5F ('770 history) at 5F41.</p> <p><i>The invention – '895 patent:</i><br/>           col. 1, ll. 14-65;<br/>           col. 1, 1, 66 - col. 2, 1, 7;<br/>           col. 2, 1, 36 - col. 5, 1, 67;<br/>           col. 6, ll. 27-37;<br/>           col. 6, 1, 65 - col. 7, 1, 3;<br/>           col. 8, ll. 14-18;<br/>           col. 11, ll. 37-60.</p> <p><b>Extrinsic evidence:</b><br/>           Exh. 7 (Sybert Report), ¶¶ 24-44;<br/>           Exh. 12 (Ziegler Depo), p. 42, ll. 3-17;<br/>           Exh. A (B000021-23);<br/>           Exh. B (CSC003675-84);<br/>           Exh. C (CSC000680);<br/>           Exh. D (CSC002976).</p> |

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|----------|--|-----------|----------|---|---|
| 13.      | An extract prepared according to the method of any one of claims 9, 16 or 17 | 5,968,567 | 18       | <p>Plaintiffs disagree that this term requires special construction, other than the term "extract." <i>See "extract" above.</i></p> <p>Applying Plaintiffs' proposed construction of "extract," this term means a substance containing beneficial amounts of Phase II enzyme inducers and/or their precursors that results from the method of any of claims 9, 16, or 17.</p> | <p><b>Intrinsic evidence:</b><br/>         '567 patent, Claims 9, 16, 18, col. 22, ll. 11.<br/>         '22-32, 53-55, 60-61;<br/>         '895 patent, Claim 15, col. 1, ll. 15-26, col. 6, 1. 65-col. 7, 1, 3, col. 11, ll. 18-34, col. 22, ll. 48-58;<br/>         '122 patent, Claims 1, 2, 5-10, 12, col. 21, 1. 55-col. 22, 1. 34;<br/>         '770 patent, Claims 10, 13, 15-24, 26, col. 22, ll. 37-45, 50-51, 54-67, col. 23, 1-1-col. 24, 1, 4, col. 24, ll. 7-8; Exh. 5F ('770 history) at 5F41.</p> <p><i>The invention – '895 patent:</i><br/>         col. 1, ll. 14-65;<br/>         col. 1, 1. 66 - col. 2, 1. 7;<br/>         col. 2, 1. 36 - col. 5, 1. 67;<br/>         col. 6, ll. 27-37;<br/>         col. 6, 1. 65 - col. 7, 1, 3;<br/>         col. 8, ll. 14-18;<br/>         col. 11, ll. 37-60.</p> <p><b>Extrinsic evidence:</b><br/>         Exh. 7 (Sybert Report), ¶¶ 24-44;<br/>         Exh. 12 (Ziegler Depo), p. 42, ll. 3-17;<br/>         Exh. A (B000021-23);<br/>         Exh. B (CSC003675-84);<br/>         Exh. C (CSC000680);<br/>         Exh. D (CSC002976).</p> |

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|----------|--|-----------|------------------|--|---|
|          |  |           |                  | Plaintiffs' Proposed Construction  | Intrinsic evidence:   |
| 14.      | A non-toxic solvent extract of crucifer seed or cruciferous sprout | 6,177,122 | 1, 2, 5, 6, 7, 8 | <p>Plaintiffs disagree that this term requires special construction, other than the term "extract." See "extract," above.</p> <p>Applying Plaintiffs' proposed construction of "extract," this term means the fraction containing beneficial amounts of Phase II enzyme inducers and/or their precursors that results from exposure of crucifer seed or sprouts to a non-toxic solvent, where the exposure to solvent causes the separation of component fractions of the cruciferous seed or sprouts.</p> | <p>'567 patent, Claims 9, 16, 18, col. 22, ll. 22-32, 53-55, 60-61;</p> <p>'895 patent, Claim 15, col. 1, ll. 15-26, col. 6, l. 65-col. 7, l. 3, col. 11, ll. 18-34, col. 22, ll. 48-58;</p> <p>'122 patent, Claims 1, 2, 5-10, 12, col. 21, l. 55-col. 22, l. 34;</p> <p>'770 patent, Claims 10, 13, 15-24, 26, col. 22, ll. 37-45, 50-51, 54-67, col. 23, l.-col. 24, l. 4, col. 24, ll. 7-8; Exh. 5F ('770 history) at 5F41.</p> <p><i>The invention – '895 patent.</i></p> <p>col. 1, ll. 14-65;</p> <p>col. 1, l. 66 - col. 2, l. 7;</p> <p>col. 2, l. 36 - col. 5, l. 67;</p> <p>col. 6, ll. 27-37;</p> <p>col. 6, l. 65 - col. 7, l. 3;</p> <p>col. 8, ll. 14-18;</p> <p>col. 11, ll. 37-60.</p> |

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|----------|---------------------------------|-----------|----------|---|--|
| 15.      | To extract said seed or sprout. | 6,177,122 | 2        | <p>Plaintiffs disagree that this term requires special construction, other than the term "extract." See "extract" above.</p> <p>Applying Plaintiffs' proposed construction of "extract," this term means to manipulate seeds or sprouts where the manipulation causes the separation of component fractions of the seeds or sprouts, and where at least one component fraction contains beneficial amounts of Phase II enzyme inducers and/or their precursors.</p> | <p><b>Intrinsic evidence:</b></p> <p>'567 patent, Claims 9, 16, 18, col. 22, ll. 11-22; 22-32, 53-55, 60-61; '895 patent, Claim 15, col. 1, ll. 15-26, col. 6, ll. 65-col. 7, l. 3, col. 11, ll. 18-34, col. 22, ll. 48-58; '122 patent, Claims 1, 2, 5-10, 12, col. 21, l. 55-col. 22, l. 34; '770 patent, Claims 10, 13, 15-24, 26, col. 22, ll. 37-45, 50-51, 54-67, col. 23, l. 1-col. 24, l. 4, col. 24, ll. 7-8; Exh. 5F ('770 history) at 5F41.</p> <p><i>The invention – '895 patent:</i></p> <p>col. 1, ll. 14-65; col. 1, l. 66 - col. 2, l. 7; col. 2, l. 36 - col. 5, l. 67; col. 6, ll. 27-37; col. 6, l. 65 - col. 7, l. 3; col. 8, ll. 14-18; col. 11, ll. 37-60.</p> <p><b>Extrinsic evidence:</b></p> <p>Exh. 7 (Sybert Report), ¶¶ 24-44; Exh. 12 (Ziegler Depo), p. 42, ll. 3-17; Exh. A (B000021-23); Exh. B (CSC003675-84); Exh. C (CSC000680); Exh. D (CSC002976).</p> |

**APPENDIX B**  
**PLAINTIFFS' PROPOSED CONSTRUCTIONS AND SUPPORTING EVIDENCE**

| Ref. No. | Term(s) to be Construed                                | Patent(s) | Claim(s) | Plaintiffs' Proposed Construction  | Identification Of All References From The Specification And Prosecution History And Identification Of Extrinsic Evidence Relied Upon <sup>1</sup>  |
|----------|--|-----------|----------|--|--|
| 16.      | Said extract is dried, cooled, frozen, or freeze-dried | 6,177,122 | 5        | <p>Plaintiffs disagree that this term requires special construction, other than the term "extract." See "extract" above.</p> <p>Applying Plaintiffs' proposed construction of "extract," this term means that the fraction containing beneficial amounts of Phase II enzyme inducers and/or their precursors is dried, cooled, frozen or freeze-dried.</p> | <p><b>Intrinsic evidence:</b></p> <p>'567 patent, Claims 9, 16, 18, col. 22, ll. 22-32, 53-55, 60-61;</p> <p>'895 patent, Claim 15, col. 1, ll. 15-26, col. 6, l. 65-col. 7, l. 3, col. 11, ll. 18-34, col. 22, ll. 48-58;</p> <p>'122 patent, Claims 1, 2, 5-10, 12, col. 21, l. 55-col. 22, l. 34;</p> <p>'770 patent, Claims 10, 13, 15-24, 26, col. 22, ll. 37-45, 50-51, 54-67, col. 23, l. 1-col. 24, l. 4, col. 24, ll. 7-8; Exh. 5F ('770 history) at 5F41.</p> <p><i>The invention – '895 patent:</i></p> <p>col. 1, ll. 14-65;</p> <p>col. 1, l. 66 - col. 2, l. 7;</p> <p>col. 2, l. 36 - col. 5, l. 67;</p> <p>col. 6, ll. 27-37;</p> <p>col. 6, l. 65 - col. 7, l. 3;</p> <p>col. 8, ll. 14-18;</p> <p>col. 11, ll. 37-60.</p> <p><b>Extrinsic evidence:</b></p> <p>Exh. 7 (Sybert Report), ¶¶ 24-44;</p> <p>Exh. 12 (Ziegler Depo), p. 42, ll. 3-17;</p> <p>Exh. A (B000021-23);</p> <p>Exh. B (CSC003675-84);</p> <p>Exh. C (CSC000680);</p> <p>Exh. D (CSC002976).</p> |

## APPENDIX B

## PLAINTIFFS' PROPOSED CONSTRUCTIONS AND SUPPORTING EVIDENCE

| Ref. No. | Term(s) to be Construed | Patent(s) | Claim(s) | Plaintiffs' Proposed Construction  | Identification Of All References From The Specification And Prosecution History And Identification Of Extrinsic Evidence Relied Upon <sup>1</sup>   |
|----------|-------------------------|-----------|----------|--|---|
| 17.      | The extract             | 6,177,122 | 6, 7, 8  | <p>Plaintiffs disagree that this term requires special construction, other than the term "extract." See "extract" above.</p> <p>Applying Plaintiffs' proposed definition of "extract," this term means the substance containing beneficial amounts of Phase II enzyme inducers and/or their precursors that results from manipulation of one or more of cruciferous sprouts, seeds, plants, and/or plant parts, where the manipulation causes the separation of component fractions of the cruciferous sprouts, seeds, plants, and/or plant parts.</p> | <p><b>Intrinsic evidence:</b></p> <p>'567 patent, Claims 9, 16, 18, col. 22, ll. 22-32, 53-55, 60-61;</p> <p>'895 patent, Claim 15, col. 1, ll. 15-26, col. 6, l. 65-col. 7, l. 3, col. 11, ll. 18-34, col. 22, ll. 48-58;</p> <p>'122 patent, Claims 1, 2, 5-10, 12, col. 21, l. 55-col. 22, l. 34;</p> <p>'770 patent, Claims 10, 13, 15-24, 26, col. 22, ll. 37-45, 50-51, 54-67, col. 23, 1-col. 24, l. 4, col. 24, ll. 7-8; Exh. 5F ('770 history) at 5F41.</p> <p><i>The invention – '895 patent:</i></p> <p>col. 1, ll. 14-65;</p> <p>col. 1, l. 66 - col. 2, l. 7;</p> <p>col. 2, l. 36 - col. 5, l. 67;</p> <p>col. 6, ll. 27-37;</p> <p>col. 6, l. 65 - col. 7, l. 3;</p> <p>col. 8, ll. 14-18;</p> <p>col. 11, ll. 37-60.</p> <p><b>Extrinsic evidence:</b></p> <p>Exh. 7 (Sybert Report), ¶¶ 24-44;</p> <p>Exh. 12 (Ziegler Depo), p. 42, ll. 3-17;</p> <p>Exh. A (B000021-23);</p> <p>Exh. B (CSC003675-84);</p> <p>Exh. C (CSC000680);</p> <p>Exh. D (CSC002976).</p> |

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**PLAINTIFFS' PROPOSED CONSTRUCTIONS AND SUPPORTING EVIDENCE**

| Ref. No. | Term(s) to be Construed | Patent(s) | Claim(s)  | Plaintiffs' Proposed Construction  | Identification Of All References From The Specification And Prosecution History And Identification Of Extrinsic Evidence Relied Upon <sup>1</sup>  |
|----------|-------------------------|-----------|-----------|--|--|
| 18.      | Extract of said seed    | 6,177,122 | 9, 10, 12 | <p>Plaintiffs disagree that this term requires special construction, other than the term "extract." See "extract" above.</p> <p>Applying Plaintiffs' proposed construction of "extract," this terms means the substance containing beneficial amounts of Phase II enzyme inducers and/or their precursors that results from manipulation of seeds, where the manipulation causes the separation of component fractions of the cruciferous seeds.</p> | <p><b>Intrinsic evidence:</b></p> <p>'567 patent, Claims 9, 16, 18, col. 22, ll. 22-32, 53-55, 60-61;</p> <p>'895 patent, Claim 15, col. 1, ll. 15-26, col. 6, l. 65-col. 7, l. 3, col. 11, ll. 18-34, col. 22, ll. 48-58;</p> <p>'122 patent, Claims 1, 2, 5-10, 12, col. 21, l. 55-col. 22, l. 34;</p> <p>'770 patent, Claims 10, 13, 15-24, 26, col. 22, ll. 37-45, 50-51, 54-67, col. 23, l. 1-col. 24, l. 4, col. 24, ll. 7-8; Exh. 5F ('770 history) at 5F41.</p> <p><i>The invention – '895 patent:</i></p> <p>col. 1, ll. 14-65;</p> <p>col. 1, l. 66 - col. 2, l. 7;</p> <p>col. 2, l. 36 - col. 5, l. 67;</p> <p>col. 6, ll. 27-37;</p> <p>col. 6, l. 65 - col. 7, l. 3;</p> <p>col. 8, ll. 14-18;</p> <p>col. 11, ll. 37-60.</p> <p><b>Extrinsic evidence:</b></p> <p>Exh. 7 (Sybert Report), ¶¶ 24-44;</p> <p>Exh. 12 (Ziegler Depo), p. 42, ll. 3-17;</p> <p>Exh. A (B000021-23);</p> <p>Exh. B (CSC003675-84);</p> <p>Exh. C (CSC000680);</p> <p>Exh. D (CSC002976).</p> |

**APPENDIX B**  
**PLAINTIFFS' PROPOSED CONSTRUCTIONS AND SUPPORTING EVIDENCE**

| Ref. No. | Term(s) to be Construed  | Patent(s) | Claim(s)   | Plaintiffs' Proposed Construction  | Identification Of All References From The Specification And Prosecution History And Identification Of Extrinsic Evidence Relied Upon <sup>1</sup>  |
|----------|--|-----------|--|--|--|
| 19.      | Recovering said glucosinolates and isothiocyanates                   | 7,303,770 | 10, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26 | <p>Plaintiffs disagree that this term requires special construction.</p> <p>This term means that, following the separation of the fraction containing sprouts and/or seeds from the fraction containing the solvent, the fraction rich in glucosinolates and isothiocyanates is retained for further processing.</p> | <p><b>Intrinsic evidence:</b><br/> <i>The invention – '895 patent:</i><br/>           col. 1, ll. 14-65;<br/>           col. 1, 1. 66 - col. 2, 1. 7;<br/>           col. 2, 1. 36 - col. 5, 1. 67;<br/>           col. 6, ll. 27-37;<br/>           col. 6, 1. 65 - col. 7, 1. 3;<br/>           col. 8, ll. 14-18;<br/>           col. 11, ll. 37-60.</p>  |
| 20.      | At a temperature sufficient to inactivate myrosinase enzyme activity | 7,303,770 | 10, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26 | <p>Plaintiff disagree that this term requires special construction.</p> <p>The temperature sufficient to inactivate myrosinase enzyme activity will vary with the solvent chosen. Hot or boiling water will inactivate myrosinase activity, as will very cold (-50°C) organic solvents.</p>                          | <p><b>Intrinsic Evidence:</b><br/>           Hot water: '770 patent, col. 11, ll. 26-31;<br/>           col. 19, ll. 6-11.</p> <p>Cold organic solvents: '770 patent, col. 9, ll. 4-19; col. 21, ll. 45-49.</p> <p>'895 patent: col. 9, ll. 7-13; col. 11, ll. 22-24; col. 21, ll. 22-26.</p> <p><i>The invention – '895 patent:</i><br/>           col. 1, ll. 14-65;<br/>           col. 1, 1. 66 - col. 2, 1. 7;<br/>           col. 2, 1. 36 - col. 5, 1. 67;<br/>           col. 6, ll. 27-37;<br/>           col. 6, 1. 65 - col. 7, 1. 3;<br/>           col. 8, ll. 14-18;</p> |

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**PLAINTIFFS' PROPOSED CONSTRUCTIONS AND SUPPORTING EVIDENCE**

| Ref. No. | Term(s) to be Construed                                     | Patent(s) | Claim(s) | Plaintiffs' Proposed Construction  | Identification Of All References From The Specification And Prosecution History And Identification Of Extrinsic Evidence Relied Upon <sup>1</sup>   |
|----------|---|-----------|----------|--|---|
| 21.      | Homogenizing said plant tissue with said non-toxic solvent. | 7,303,770 | 21       | <p>Plaintiffs disagree that this term requires special construction.</p> <p>This term means mixing the plant tissue with the non-toxic solvent in a manner that forms a homogeneous mixture.</p> | <p><b>Intrinsic Evidence:</b></p> <p>‘895 patent, col. 5, ll. 45-51; col. 8, ll. 28-33, 58-60; col. 12, ll. 44-49; col. 15, ll. 8-10; col. 17, ll. 1-10;</p> <p>‘895 patent, col. 1, ll. 14-65; col. 7, l. 66-col. 2, l. 7; col. 2, ll. 19-43; col. 6, l. 65 - col. 7, l. 3; col. 8, ll. 14-18.</p> |